

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

MICHAEL TYRONE McCULLON, :
Plaintiff, : No. 3:10-CV-1541
v. :
THOMAS BROUSE, et al., : (Judge Kosik)
Defendants, :

FILED
SCRANTON
APR 13 2011

PER _____
DEPUTY CLERK

ORDER

AND NOW, THIS 12 DAY OF APRIL, 2011, IT APPEARING TO THE
COURT THAT:

(1) Plaintiff, Michael Tyrone McCullon, an inmate confined at the Medical Center for Federal Prisoners, Springfield, Missouri filed the instant civil rights action on July 27, 2010 based on incidents that occurred while he was an inmate at Lewisburg Federal Penitentiary;

(2) The matter was assigned to Magistrate Judge Martin C. Carlson;

(3) On December 20, 2010, the defendants filed a motion to dismiss and/or, in the alternative, for summary judgment. (Doc. 37);

(4) On March 24, 2011, the Magistrate Judge issued a Report and Recommendation (Doc. 62) in which he recommended that the defendants' motion to dismiss, or in the alternative, for summary judgment, be granted in part and denied in part. Specifically, the Magistrate Judge recommended that the complaint be dismissed as to Defendants, Bledsoe, Dreese, Perrin, Raup and Fosnot, but that the motion be denied as to Defendants Brouse, Stuart, Johnson and Sassaman.;

(5) In particular, the Magistrate Judge found that plaintiff's claims against supervisory and investigative defendants Bledsoe, Dreese, Perrin and Fosnot fail as a matter of law and that the plaintiff's claim against Defendant Raup, a witness to the

incident, also fails. However, the Magistrate Judge found disputed issues of material fact regarding plaintiff's Eighth Amendment claims against Defendants Brouse, Stuart, Johnson and Sassaman;

(6) Plaintiff did not file objections to the Report and Recommendation of the Magistrate Judge;

AND, IT FURTHER APPEARING THAT:

(7) If no objections are filed to a Magistrate Judge's Report and Recommendation, the plaintiff is not statutorily entitled to a de novo review of his claims. 28 U.S.C.A. § 636 (b)(1)(C); Thomas v. Arn, 474 U.S. 140, 150-53 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a Magistrate Judge's Report prior to adopting it. Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987);

(8) We have reviewed the Report of the Magistrate Judge and we agree with his Recommendations;

(9) We will grant the motion to dismiss, or in the alternative, for summary judgment as to Defendants Bledsoe, Raup, Dreese, Fosnot and Perrin, but we will deny the motion as to Defendants Brouse, Stuart, Johnson and Sassaman.

(10) Following the filing of the Report and Recommendation, plaintiff filed several documents, including a preliminary/permanent injunction and a Motion for Appointment of Counsel (Docs. 63-69). Because we are remanding this action to the Magistrate Judge, we will leave these matters for the Magistrate Judge's consideration.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

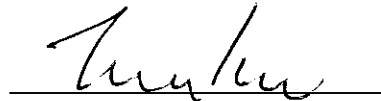
(1) The Report and Recommendation of Magistrate Judge Martin C. Carlson dated March 24, 2011 (Doc. 62) is **ADOPTED**;

(2) The motion to dismiss, or in the alternative, for summary judgment, is **GRANTED**, as to Defendants Bledsoe, Raup, Fosnot, Perrin and Dreese, and they

are dismissed from this action;

(3) The motion to dismiss, or in the alternative, for summary judgment, is **DENIED** as to Defendants Brouse, Stuart, Johnson and Sassaman;

(4) The above-captioned action is **REMANDED** to the Magistrate Judge for further proceedings.

A handwritten signature in cursive script, appearing to read 'Edwin M. Kosik', is written over a horizontal line.

Edwin M. Kosik
United States District Judge

DATED: April 12, 2011